

# PUBLIC WORKS AGREEMENT

THIS AGREEMENT is entered into the date last below written between Clark Regional Wastewater District ("District"), and \_\_\_\_\_, ("Contractor").

The parties agree as follows:

1) Contractor Services.

1.1 The Contractor shall perform the following services for the District:

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1.2 The Contractor shall furnish at its own cost and expense all labor, tools, equipment and materials required. The Contractor shall construct and complete in a good workmanlike manner, and to the satisfaction of the District, the work designated, described and required by the applicable plans, specifications and approved proposal for construction of the improvements, all of which documents are a part of this Agreement.

2) Time of Completion. The Contractor shall commence work within 7 days after issuance of Notice to Proceed by the District, and shall complete the work within \_\_\_\_\_ calendar days from the District's issuance of the Notice to Proceed.

3) Compensation. The District shall pay the Contractor the total amount of \$\_\_\_\_\_, including applicable sales tax, for all work and services covered by this Agreement. The Contractor shall submit monthly invoices for work and services performed in a previous calendar month in a format acceptable to the District. The District shall pay for the portion of the work described in the invoice that has been completed by the Contractor and approved by the District. The District's payment shall not constitute a waiver of the District's right to final inspection and acceptance of the work.

3.1 Performance Bond. Pursuant to RCW 39.08.010, the Contractor shall provide the District a performance bond for the full contract amount to be in effect until 60 days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Employment Securities, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

3.2 Retainage. The District shall hold back a retainage in the amount of 5% of any and all payments made to the Contractor for a period of 60 days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

3.3 Defective or Unauthorized Work. The District reserves the right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement, and extra work and materials furnished without the District's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the District may complete the work by contract or otherwise, and the Contractor shall be liable to the District for any additional costs incurred by the District. "Additional costs" means all reasonable costs incurred by the District, including legal costs and attorneys' fees, beyond the maximum contract price under this Agreement. The District further reserves the right to deduct the cost to complete the work, including any additional costs, from any amounts due or to become due to the Contractor.

3.4 Final Payment; Waiver of Claim. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY THE CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

4) Termination.

4.1 This District may terminate this Agreement for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

4.1.1 The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the work.

4.1.2 The Contractor's failure to complete the work within the time specified in this Agreement.

4.1.3 The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.

4.1.4 The Contractor's failure to comply with any federal, state, or local laws, regulations, rules, or ordinances.

4.1.5 The Contractor's filing for bankruptcy or being adjudged bankrupt.

If the District terminates this Agreement for good cause, the Contractor shall not receive any further monies due under this Agreement until the Contract work is completed.

5) Independent Contractor. The Contractor is and shall be at all times during the term of this Agreement an independent contractor.

6) Prevailing Wages. Prevailing wages shall be paid in accordance with Chapter 39.12 RCW, and the Contractor shall comply with all requirements of Chapter 39.12 RCW.

7) Changes. The District may issue a written change order for any change in the work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to the District within 14 calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the District determines that the change increases or decreases the Contractor's costs or time for performance, the District will make an equitable adjustment. The District will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. If the parties are unable to agree, the District will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving the written change order. If the Contractor fails to require a change order within the time frame allowed the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below.

7.1 Procedure and Protest by Contractor. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the District, including any direction, instruction, interpretation, or determination by the District, the Contractor shall, within 14 calendar days, provide a signed written notice of protest to the District that states the date of the notice of protest, the nature and circumstances that caused the protest, the provisions in the agreement that support the protest, the estimated dollar cost, if any, of the protested work and how the estimate was determined, and an analysis of the progress schedule showing the schedule change or disruption, if applicable. The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The District shall have access to any of the Contractor's records needed to evaluate the protest. If the District determines that a protest is valid, the District will adjust the payment for work or time by an equitable adjustment.

7.2 Contractor's Duty to Complete Protested Work. In spite of any protest, the Contractor shall proceed to promptly complete work that the District has ordered.

7.3 Contractor's Acceptance of Changes. The Contractor accepts all requirements of a change order by: (1) endorsing the change order; (2) writing a separate acceptance; or (3) not protesting in the manner this section provides. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct,

indirect, and consequential costs, including costs of delays related to any work, either covered or affected by the change.

7.4 Failure to Protest or Follow Procedures Constitutes Waiver. By not protesting or following procedures as this section provides, the Contractor waives any additional entitlement or claims for protested work, and accepts from the District any written or oral order (including directions, instructions, interpretations, and determinations).

8) Claims. The Contractor shall give written notice to the District of all claims other than change orders within 14 calendar days of the occurrence of events giving rise to the claim. Any claim for damages, additional payment for any reason, or extension of time, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement. At a minimum, a Contractor's written claim must include the information required in Paragraph 7.1 regarding protests.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM.

The Contractor must, in any event, file any claim or bring any suit arising from or connected with this Agreement within 120 calendar days from the date the work is completed.

9) Warranty. The Contractor shall correct all defects in workmanship and materials within the specified period for the type of work from the date of the District's acceptance of the work. When defects are corrected, the warranty for that portion of the work shall extend for one year from the date such correction is completed and accepted by the District. The Contractor shall begin to correct any defects within 7 days of its receipt of notice from the District of the defect. If the Contractor does not accomplish the corrections within a reasonable time, the District may complete the correction and the Contractor shall pay all costs incurred by the District to accomplish the correction.

10) Indemnification and Hold Harmless. The Contractor shall protect, defend, indemnify and save harmless District, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, including all legal costs and attorneys' fees, arising out of or in any way connected with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the District. The District's inspection or acceptance of any of the work shall not be grounds to avoid any of these covenants for indemnification. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the District, its officers, employees, or agents, the Contractor's liability under this paragraph shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THIS INDEMNIFICATION CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this paragraph 10 shall survive the expiration or termination of this Agreement.

11) Insurance. The Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property arising out of or in connection with the performance of work under this Agreement by the Contractor, its officers, employees and agents:

11.1 Automobile Liability Insurance with limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage.

11.2 Commercial General Liability Insurance written on an occurrence basis with limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket

contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

Before commencing work under this Agreement, the Contractor shall provide to the District a Certificate of Insurance evidencing the required insurance. District reserves the right to request and receive a certified copy of all required insurance policies.

Any payment of deductible or self-insured retention shall be the sole responsibility of the Contractor. The District shall be named as an additional insured on the Commercial General Liability Insurance Policy, with regard to work and services performed by or on behalf of Consultant, and a copy of the endorsement naming District as an additional insured shall be attached to the Certificate of Insurance.

The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to District; and (3) shall state that District will be given 45 days' prior written notice of any cancellation, suspension or material change in coverage.

12. Miscellaneous.

12.1 Subletting or Assigning Contract. The Contractor shall not assign, transfer, or encumber any rights, duties or interest accruing from this Agreement without the express prior written consent of the District.

12.2 Extent of Agreement Modification. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

12.3 Work Performed at Contractor's Risk. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work under this Agreement. All work shall be done at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

12.4 Nonwaiver of Breach. The failure of the District to insist upon strict performance of any of the terms and rights contained in this Agreement, or to exercise any option contained in this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and such terms and rights shall remain in full force and effect.

12.5 Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless otherwise notified. Any written notice shall become effective on delivery, but in any event on 3 calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement.

Clark Regional Wastewater District  
8000 NE 52<sup>nd</sup> Court  
PO Box 8979  
Vancouver, WA 98668-8979

CONTRACTOR

Attention: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12.6 Discrimination. The Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

12.7 Compliance with Laws. The Contractor shall comply with all federal, state and local laws, ordinances, regulations, and rules applicable to the work to be done under this Agreement.

12.7 A Bidder Responsibility Criteria. The Contractor agrees to comply with the requirements of Bidder Responsibility Criteria as set forth in RCW 39.04.350 and RCW 39.06.020.

CONTRACTOR

Clark Regional Wastewater District

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

John M. Peterson, General Manager

Title \_\_\_\_\_